

New Jersey Commissioner of Education**Final Decision**

Yolette Severe,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

Synopsis

Petitioner – a school bus driver – appealed the Department’s determination to suspend her school bus endorsement pursuant to *N.J.S.A. 18A:39-28 et seq.* after an incident in which a Millburn student was left on petitioner’s school bus at the end of one of her assigned bus routes on November 16, 2020. Petitioner did not dispute that the child was left on the bus but contended that the student was never left alone. Although petitioner contended that she had called each student’s name as they left the bus, she conceded that she had not conducted a visual walk-through to check for remaining students, and that after petitioner arrived at the bus parking lot, a student who had fallen asleep awoke and stood up; petitioner then drove the student back to their assigned school. The respondent Department filed a motion to dismiss in lieu of an answer, requesting that the motion be converted to a summary decision motion upon transmittal of the matter to the Office of Administrative Law (OAL).

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner has admitted that on November 16, 2020, she did not conduct a full visual inspection of her school bus when she dropped off students at the their school in Millburn; pursuant to *N.J.S.A. 18A:39-28*, petitioner had an affirmative duty to visually inspect the school bus at the end of the transportation route to determine that no pupil had been left on the bus; the “end of the transportation route” was when the children were dropped off at the assigned destination – the school; in accordance with *N.J.S.A. 18A:39-29*, if a school bus driver is found to have left a pupil on the bus at the end of a route, the driver’s school bus endorsement shall be suspended for six months for the first offense. Accordingly, the ALJ granted summary decision to the respondent and affirmed the petitioner’s six month suspension for leaving a child on the school bus at the end of a route.

Upon full review, the Commissioner concurred with the ALJ that the respondent is entitled to summary decision. Accordingly, the petition was dismissed; respondent was directed to notify the Motor Vehicle Commission of its obligation to suspend petitioner’s school bus endorsement pursuant to *N.J.S.A. 18A:39*, and to notify petitioner’s employer that she is ineligible for the period of suspension for continued employment as a school bus driver.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

302-22
OAL Dkt. No. EDU 01502-21
Agency Dkt. No. 245-12/20

New Jersey Commissioner of Education

Final Decision

Yolette Severe,

Petitioner,

v.

New Jersey Department of Education,
Office of Student Protection,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

On November 16, 2020, petitioner, a bus driver for the Millburn school district, transported students to school. Although she called each student's name as they left the bus, she did not visually inspect the bus for remaining students. After petitioner left the school and arrived at the bus parking lot, she realized a student who had fallen asleep was still on the bus. Petitioner then returned the child to school.

The Administrative Law Judge (ALJ) concluded that the "end of the transportation route" was when the children were dropped off at the assigned destination – the school. Petitioner did not conduct a visual inspection of the bus, as required by *N.J.S.A. 18A:39-28*, before leaving the school. The ALJ therefore ordered that petitioner's "S" endorsement be

suspended for six months, as *N.J.S.A. 18A:39-29(a)* imposes that mandatory suspension for a first-time offense of leaving a child on a school bus.

Upon review, the Commissioner concurs with the ALJ that petitioner failed to inspect the bus at the end of her route as required, which resulted in a student being left on the bus. As such, the Commissioner agrees with the ALJ's conclusion that *N.J.S.A. 18A:39-29* mandates a six-month suspension of petitioner's school bus endorsement as this was her first offense.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed. The Office of Student Protection is directed to notify the Motor Vehicle Commission of its obligation, pursuant to *N.J.S.A. 18A:39-29*, to suspend petitioner's school bus "S" endorsement on her driver's license for six months and to notify petitioner's employer that, for the period of suspension, she is ineligible for continued employment as a school bus driver.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 31, 2022
Date of Mailing: November 2, 2022

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 01502-21

AGENCY DKT. NO. 245-12/20

YOLETTE SEVERE,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF
EDUCATION, OFFICE OF STUDENT
PROTECTION,**

Respondent.

Landry Belizaire, Esq., for petitioner

Hasibul Haque, Deputy Attorney General, for respondent (Matthew J. Platkin,
Acting Attorney General of New Jersey, attorney)

Record Closed: August 9, 2022

Decided: September 19, 2022

BEFORE **LESLIE Z. CELENTANO,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Yolette Severe (Severe), challenges the suspension of her bus-driver “S” endorsement. The six-month suspension is due to petitioner’s alleged violation of

N.J.S.A. 18A:39-28, et seq., in leaving a child on a school bus assigned to her on November 16, 2020. The Office of Student Protection (OSP) determined that this was petitioner's first offense of this kind, and accordingly imposed a penalty of a six-month suspension of her "S" endorsement to operate a school bus.

Petitioner filed her Petition of Appeal with the Department on November 30, 2020. On January 22, 2021, the Department filed a motion to dismiss in lieu of an answer, pursuant to N.J.A.C. 6A:3-1.10.¹ The matter was transferred to the Office of Administrative Law (OAL), where it was filed on February 5, 2021, as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Multiple telephone status conferences were held. No opposition had been filed to the Department's motion to dismiss. Petitioner was granted multiple extensions of time within which to file responsive pleadings. On April 18, 2022, the Department renewed its request for this matter to be dismissed. Petitioner replied and asked for an additional ten days to review the motion and file opposition, and the request for additional time was granted once again. Nothing was received from petitioner, and on July 5, 2022, the Department renewed its request for the dismissal of this matter. A peremptory telephone conference was scheduled for July 18, 2022, and no one appeared for petitioner. As of that date the motion remained unopposed, more than a year and a half after its filing. On July 20, 2022, petitioner emailed asking that the telephone conference from two days earlier be rescheduled. Petitioner was instead advised that if no responsive pleadings were received by July 29, 2022, the matter would be dismissed.

Nothing was received by July 29, 2022. On August 1, 2022, an email was received on behalf of petitioner seeking oral argument on the motion. That request was denied. A response to the motion was thereafter received on August 9, 2022, in opposition to the Department's motion to dismiss in lieu of answer. On August 9, 2022, the Department filed its reply. The record closed on August 9, 2022.

¹ The Department had initially filed a Motion to Dismiss in Lieu of an Answer with the Commissioner of Education under N.J.A.C. 6A:3-1.10. The Department requested in its motion that once the matter was transferred to the Office of Administrative Law, the Department's motion be converted to a summary-decision motion under N.J.A.C. 1:1-12.5, as no material facts are in dispute.

FINDINGS OF FACT

1. On November 16, 2020, Severe was working as a bus driver for the Millburn school district. She completed her scheduled route for the group of students she was transporting, and “called each child” as they left the bus.

2. Without visually inspecting the bus for any remaining students, Severe left the school and drove to the bus parking lot, and as she was leaving the bus, “a student stood up that fell asleep.” Severe then returned to the school with that student, N.B.

3. Severe indicated that if it had not been for a new policy in the District, she “would have walked the bus” as she had “done every morning.”

4. Severe admits that she left the school after dropping off the group she was transporting and did not visually inspect the bus. Instead, she called students by name at the school.

5. Severe alleges that the child on board was “never left alone” and that she had “not yet completed her transportation route.”

DISCUSSION

The School Bus Safety Act, N.J.S.A. 18A:39-26 to -33, requires that the school-bus driver “shall visually inspect the school bus to which he is assigned at the end of the transportation route to determine that no pupil has been left on the bus.” N.J.S.A. 18A:39-28. A violation of N.J.S.A. 18A:39-28 results in a mandatory penalty. N.J.S.A. 18A:39-29. The statute dictates that “[i]n the event that, after notice and opportunity to be heard, a school bus driver is found to have left a pupil on the school bus at the end of his route, his school bus endorsement shall be: (a) suspended for six months, for a first offense” N.J.S.A. 18A:39-29(a).

The issue in this case is whether Severe complied with the statutory requirement that the driver “shall visually inspect the school bus to which he is assigned at the end of the transportation route to determine that no pupil has been left on the bus.” N.J.S.A. 18A:39-28.

Severe has admitted that she did not visually inspect the bus when she dropped off the children at a Millburn school before proceeding to the bus lot. Because it is undisputed that petitioner did not visually inspect the school bus at the end of her route, and prior to starting her next route, no further inquiry is required. Arcos v. N.J. Dep’t of Educ., Crim. Hist. Rev. Unit, 2018 N.J. AGEN LEXIS 497 (August 28, 2018), adopted, 2018 N.J. AGEN LEXIS 1208 (September 20, 2018). As in Arcos, Severe argues that she had not yet completed her transportation route, implying that her route ends at the end of her work day when all children have been dropped off, and that the child was “never left alone and was with her at all times.” The administrative law judge (ALJ) in Arcos determined that Arcos admitted that she did not visually inspect the bus when she dropped students off at the school, and that whether she “did or did not remain in the vicinity of the child is therefore not relevant to her claim that the child ‘was never left alone.’” The ALJ also concluded that Arcos’s route ended at the school, and not at the end of her work day.

The “end of the route” pursuant to N.J.S.A. 18A:39-26 is at the point where all of the children in that group leave the bus to enter their school, and the bus is empty of riders, and before the driver moves on to her next route, at which point the driver shall inspect the bus for remaining students. Klein v. N.J. Dep’t of Educ. Crim. Hist. Rev. Unit, 2012 N.J. AGEN LEXIS 781, Comm’r Decision (February 21, 2012).

Thus, whether Severe did or did not remain in the vicinity of the child is therefore not relevant to her claim that the child “was never left alone.” The critical analysis is did the Department fail to establish by a preponderance of the credible evidence that she failed to visually inspect the school bus to which she was assigned at the end of the transportation route to determine that no pupil had been left on the bus?

Severe admits that she failed to visually inspect her bus when she dropped off the children at their school in Millburn. Her route ended when she dropped the students off at the school. She did not visually inspect the bus before driving to the bus lot. It is undisputed that a student remained on the bus at the end of the route and was still on the bus when Severe arrived at the bus lot and was exiting the bus. The statute is unambiguous in its requirement that the driver visually inspect the bus, and Severe did not do so, in violation of N.J.S.A. 18A:39-28. Because of the safety implication of such a violation, a mandatory penalty exists in the event that the OSP determines that a child was indeed left behind. Garner v. N.J. Dep't of Educ., Crim. Hist. Rev. Unit, 2009 N.J. AGEN LEXIS 173 (April 3, 2009), adopted, Comm'r (May 1, 2009), <https://www.nj.gov/education/legal/>. Thus, “[i]n the event that . . . a school bus driver is found to have left a pupil on the school bus . . . , his school bus endorsement shall be: (a) suspended for six months, for a first offense” N.J.S.A. 18A:39-29(a). Here, since Severe was in clear violation of the statute, the penalty imposed is mandatory, and there is no discretion to impose anything less than a six-month suspension of her “S” endorsement. Where the violation has been established, no circumstances of the event or of the driver may be considered in determining the penalty. Garner, 2009 N.J. AGEN LEXIS 173 at *5–6.

I **CONCLUDE** that as the “end of the transportation route” under N.J.S.A. 18A:39-28 is when the children are dropped off at the assigned destination, that triggers the school-bus driver’s affirmative duty to inspect the school bus under N.J.S.A. 18A:39-28, not when the bus driver completes all of her assigned routes for the day.

The Department seeks relief pursuant to N.J.A.C. 1:1-12.5(b), which provides that summary decision should be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This provision mirrors the summary-judgment language of R. 4:46-2(c) of the New Jersey Court Rules. The motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Ibid. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. at 242, 249 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Ibid. (quoting Liberty Lobby, 477 U.S. at 252).

I **CONCLUDE** that the evidence presented by the parties does not establish any material facts in dispute. Given the limited facts that must be established to support a violation of the duty imposed by the Legislature on a school-bus driver to properly inspect the bus at the end of a route to assure that no child is left on the bus, the arguments offered by the Department amply support summary decision in its favor. And given the mandatory nature of the penalty for a first-time violator of the mandate, the six-month suspension is the only outcome where the violation is proven. N.J.S.A. 18A:39-29(a). The Department’s motion for summary decision must be **GRANTED**.

ORDER

It is hereby **ORDERED** that the Department’s motion for summary decision is hereby **GRANTED** and it is further **ORDERED** that the petitioner’s “S” endorsement shall be suspended for six months.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 19, 2022
DATE


LESLIE Z. CELENTANO, ALJ

Date Received at Agency: September 19, 2022

Date Mailed to Parties: September 19, 2022